IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7148 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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SHAMJI @ SOMABHAI BADHABHAI MAKWANA THROUGH FRIEND - Petitioner(s)

Versus

STATE OF GUJARAT &3 - Respondent(s)

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Appearance :

MR AR SHAIKH for Petitioner No(s).: 1.

Mr.P.D.Bhate, AGPfor Respondent No(s).: 1,2,3.

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CORAM :HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 28/06/2005

ORAL JUDGMENT

1.By filing this petition, the petitioner detenu has challenged the detention order dated 10.04.2005 passed by the Police Commissioner,

Rajkot City in exercise of the powers conferred upon him under sub-section (1) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to four criminal cases which are filed under the provisions of Indian Penal Code. In the grounds of detention, the statements of certain witnesses have been recorded.

3. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the detaining authority has failed to substantiate that the alleged anti-social activities of the petitioner adversely affect or likely to affect the maintenance of the public order. He submitted that merely because the petitioner is a bootlegger, he cannot be preventively detained under the provisions of the Act unless his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order as laid down in sub-section (4) of Section 3 of the Act. It is further submitted that there was no credible material before the detaining authority to come to the conclusion that the alleged activities of the petitioner would adversely affect the maintenance of the public order as defined by the Act. It is, therefore, requested to quash and set aside the impugned detention order.

4. On the other-hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of respondent no.2 wherein it is stated that the activities of the petitioner disturb the public order and to curb the activities of the petitioner, the detention order is passed against the petitioner, which is just and proper.

5. It is true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the petitioner disturb the public order and to curb the activities of the petitioner, the detention order is passed against the petitioner, but this bald observation cannot be taken to be the basis to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. In this view of the matter, from the cases registered against the petitioner, it cannot be said to be a material for arriving at the satisfaction that the alleged activities of the petitioner are threat to the public health and public order.

Considering the facts and circumstances of the case and considering the judgment delivered in Letters Patent Appeal No.223 of 2000, in my view, the order of detention is required to be quashed and set aside.

6. In view of what is stated above, the petition is allowed. The order of detention dated 10.04.2005 is quashed and set aside. The detenu Shamji @ Somabhai Badhabhai Makwana is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(SHARAD D DAVE, J)

srilatha